

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

REALTIME DATA LLC d/b/a IXO,
Plaintiff,

v.

CENTURYLINK, INC., AND VERITAS
TECHNOLOGIES LLC,
Defendants.

Case No. 6:16-cv-87

JURY TRIAL DEMANDED

**COMPLAINT FOR PATENT INFRINGEMENT AGAINST
CENTURYLINK, INC. AND VERITAS TECHNOLOGIES LLC**

This is an action for patent infringement arising under the Patent Laws of the United States of America, 35 U.S.C. § 1 *et seq.* in which Plaintiff Realtime Data LLC d/b/a IXO (“Plaintiff,” “Realtime,” or “IXO”) makes the following allegations against Defendant CenturyLink, Inc. (“CenturyLink”) and Defendant Veritas Technologies LLC (“Veritas”) (collectively, “Defendants”):

PARTIES

1. Realtime is a New York limited liability company. Realtime has places of business at 5851 Legacy Circle, Plano, Texas 75024, 1828 E.S.E. Loop 323, Tyler, Texas 75701, and 116 Croton Lake Road, Katonah, New York, 10536, and is organized under the laws of the State of New York. Realtime has been registered to do business in Texas since May 2011. Since the 1990s, Realtime has researched and developed specific solutions for data compression, including, for example, those that increase the speeds at which data can be stored and accessed. As recognition of its innovations rooted in this technological field, Realtime holds over 45 United States patents and has numerous pending patent applications. Realtime has licensed patents in this portfolio to many of the world’s leading technology companies. The patents-in-suit relate to Realtime’s

development of advanced systems and methods for fast and efficient data compression using numerous innovative compression techniques based on, for example, particular attributes of the data.

2. On information and belief, Defendant CenturyLink is a Louisiana corporation, with its principal place of business at 100 CenturyLink Dr., Monroe, Louisiana 71203.¹ On information and belief, Defendant CenturyLink operates various facilities in Texas.² On information and belief, CenturyLink can be served through its registered agent, C T Corporation System, 3867 Plaza Tower Dr., Baton Rouge, LA 70816.

3. On information and belief, Defendant Veritas is a Delaware limited liability company, with its principal place of business at 500 East Middlefield Road, Mountain View, CA 94043. On information and belief, Veritas can be served through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Inco, 211 E. 7th Street Suite 620, Austin, Texas 78701. On information and belief, Defendant Veritas is the successor entity to the information management products of Symantec Corporation, including the products named in this Complaint.³

4. On information and belief, Defendant CenturyLink uses Veritas NetBackup software and/or Veritas NetBackup 5230 Appliances made by Defendant Veritas for its daily backup operations, which are the means by which CenturyLink provides its Secure Online Backup services to CenturyLink's customers.⁴ As further

¹

<http://ir.centurylink.com/Cache/31767250.pdf?IID=4057179&FID=31767250&O=3&OSID=9> at 1

² <https://jobs.centurylink.com/content/location/>;
<http://ir.centurylink.com/Cache/31767250.pdf?IID=4057179&FID=31767250&O=3&OSID=9> at 64 (“A substantial number of our facilities are located in ... Texas ...”).

³ <http://www.barrons.com/articles/symantec-veritas-sale-avoids-spinoff-1439391461>;
<http://www.reuters.com/article/us-symantec-veritas-idUSKBN0N824220150417>

⁴ <https://apps.centurylink.com/archiving-and-backup/secure-online-backup> (Secure Online Backup services sold by CenturyLink);
https://cdn2.hubspot.net/hubfs/467348/Archive/CMT_CenturyLink_Veritas.pdf (“As a

explained below, products such as Veritas NetBackup (formerly Symantec NetBackup) infringe the asserted patents. Accordingly, CenturyLink and Veritas are properly joined in this action pursuant to 35 U.S.C. § 299.

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Defendant CenturyLink in this action because CenturyLink has committed acts within the Eastern District of Texas giving rise to this action and has established minimum contacts with this forum such that the exercise of jurisdiction over CenturyLink would not offend traditional notions of fair play and substantial justice. CenturyLink, directly and through subsidiaries or intermediaries, has committed and continues to commit acts of infringement in this District by, among other things, offering to sell and selling products and/or services that infringe the asserted patents. CenturyLink is registered to do business in the State of Texas. In addition, CenturyLink operates facilities in Texas.⁵

7. This Court has personal jurisdiction over Defendant Veritas in this action because Veritas has committed acts within the Eastern District of Texas giving rise to this action and has established minimum contacts with this forum such that the exercise of jurisdiction over Veritas would not offend traditional notions of fair play and substantial justice. Veritas, directly and through subsidiaries or intermediaries, has committed and continues to commit acts of infringement in this District by, among other things, offering

service provider, CenturyLink needs to be able to expand backup capacity fast, upon customer request. CMT has arranged for a just-in-time inventory of NetBackup appliances, pre-configured to CenturyLink standards, to be on the ground in key regions”).

⁵ <https://jobs.centurylink.com/content/location/>;
<http://ir.centurylink.com/Cache/31767250.pdf?IID=4057179&FID=31767250&O=3&OSID=9> at 64 (“A substantial number of our facilities are located in ... Texas ...”).

to sell and selling products and/or services that infringe the asserted patents. Veritas is registered to do business in the State of Texas and has appointed Corporation Service Company d/b/a CSC-Lawyers Inco, 211 E. 7th Street Suite 620, Austin, Texas 78701 as its agent for service of process.

8. Venue is proper in this district under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b). Defendant CenturyLink and Defendant Veritas are each registered to do business in Texas, and upon information and belief, have transacted business in the Eastern District of Texas and have committed acts of direct and indirect infringement in the Eastern District of Texas. In addition, Defendant CenturyLink operates facilities in Texas.⁶

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 7,161,506

9. Plaintiff realleges and incorporates by reference paragraphs 1-8 above, as if fully set forth herein.

10. Plaintiff Realtime is the owner by assignment of United States Patent No. 7,161,506 (“the ‘506 patent”) entitled “Systems and methods for data compression such as content dependent data compression.” The ‘506 patent was duly and legally issued by the United States Patent and Trademark Office on January 9, 2007. A true and correct copy of the ‘506 patent, including its reexamination certificates, is included as Exhibit A.

Secure Online Backup / Veritas NetBackup

11. On information and belief, CenturyLink has made, used, offered for sale, sold and/or imported into the United States CenturyLink products that infringe the ‘506 patent, and continues to do so. By way of illustrative example, these infringing products include, without limitation, CenturyLink’s compression products and services, such as,

⁶ <https://jobs.centurylink.com/content/location/>;
<http://ir.centurylink.com/Cache/31767250.pdf?IID=4057179&FID=31767250&O=3&OSID=9> at 64 (“A substantial number of our facilities are located in ... Texas ...”).

e.g., CenturyLink (formerly savvisdirect) Secure Online Backup⁷ and all versions and variations thereof since the issuance of the ‘506 patent (“Accused Instrumentality”).

12. On information and belief, Defendant CenturyLink’s Accused Instrumentality is provided to CenturyLink’s customers using Defendant Veritas’s NetBackup software and/or appliances. *See, e.g.,*

https://cdn2.hubspot.net/hubfs/467348/Archive/CMT_CenturyLink_Veritas.pdf

(“CenturyLink needed to optimize its daily backup of 1.5 petabytes in 52 data centers worldwide. It had been using Veritas NetBackup software with NetApp FAS3250 storage systems as targets. CMT proposed using Veritas NetBackup 5230 Appliances ... CenturyLink chose CMT’s proposal with NetBackup appliances because of the significant extra hardware cost avoided. ... CenturyLink expects to deploy 50 appliances in 10 data centers by the end of 2014, saving a projected \$5 million. The rollout will continue to all 52 data centers, and with 1.5 petabytes to back up daily (an amount that could double in two years), CenturyLink will be using hundreds of NetBackup appliances with projected savings in the range of tens of millions of dollars ... As a service provider, CenturyLink needs to be able to expand backup capacity fast, upon customer request. CMT has arranged for a just-in-time inventory of NetBackup appliances, pre-configured to CenturyLink standards, to be on the ground in key regions”); <https://jobs.centurylink.com/job/Town-And-Country-SR-IT-ENGINEER-MO-63017/315002600/> (CenturyLink job posting indicating “Working knowledge of ... Netbackup (installation, troubleshooting infrastructure and backup job failures)” is a “[p]referred skill[]” for a Senior IT Engineer position).

13. On information and belief, Veritas has made, used, offered for sale, sold and/or imported into the United States Veritas products that infringe the ‘506 patent, and continues to do so. By way of illustrative example, these infringing products include,

⁷ <https://apps.centurylink.com/archiving-and-backup/secure-online-backup>

without limitation, Veritas's compression products and services such as Veritas NetBackup (formerly Symantec NetBackup), Veritas NetBackup 5230 Appliances,⁸ and all versions and variations thereof since the issuance of the '506 patent ("Accused Instrumentality").

14. On information and belief, CenturyLink and Veritas have directly infringed and continue to infringe the '506 patent, for example, through their own use and testing of the Accused Instrumentality to practice compression methods claimed by Claim 104 of the '506 patent, namely, a computer implemented method for compressing data, comprising: analyzing data within a data block of an input data stream to identify one or more data types of the data block, the input data stream comprising a plurality of disparate data types; performing content dependent data compression with a content dependent data compression encoder if a data type of the data block is identified; and performing data compression with a single data compression encoder, if a data type of the data block is not identified, wherein the analyzing of the data within the data block to identify one or more data types excludes analyzing based only on a descriptor that is indicative of the data type of the data within the data block. Upon information and belief, CenturyLink and Veritas use the Accused Instrumentality to practice infringing methods for their own internal non-testing business purposes, while testing the Accused Instrumentality, and while providing technical support, maintenance and repair services for the Accused Instrumentality to CenturyLink's customers and Veritas's customers.

15. The Accused Instrumentality is a computer-implemented method for data compression. This system minimizes the amount of data transmitted over a network and stored on a backup device. The Accused Instrumentality employs several data compression techniques to achieve this goal.

16. The Accused Instrumentality analyzes data within a data block of an input

⁸ https://www.symantec.com/content/en/us/enterprise/fact_sheets/b-netbackup_appliance_5230_DS_21273484-1.en-us.pdf

data stream to identify one or more data types of the data block, the input data stream comprising a plurality of disparate data types. *See, e.g.,* <http://www.centurylink.com/business/asset/product-info/cloud-backup-faq-sf140477.pdf> (“After selecting files, your cloud backup software platform de-duplicates and compresses data in order to reduce transfer time.”); https://apps.centurylink.com/sites/default/files/SecureOnlineBackup_savvisdirect_ProductOverview_Dec13.pdf (“Secure Online Backup also includes other key advantages that provide you with additional business benefits such as — incremental only data backups, data compression techniques such as common file elimination and data deduplication”); <https://apps.centurylink.com/support/knowledgebase/top-reasons-deploy-file-backup-and-recovery-strategy> (“Data reduction through deduplication and compression”); <http://www.settlersoman.com/netbackup-media-server-deduplication-pool-msdp-overview/>:

This post covers Media Server Deduplication Storage Pool (MSDP) which is an embedded deduplication technology that ships and is installed with base NetBackup 7.6 software, and that is provided on NetBackup appliances running version 2.6 software. There are below benefits of deduplication:

- Reduce the amount of data that is stored.
- Reduce backup bandwidth.
- Reduce backup windows.
- Reduce infrastructure.

https://www.symantec.com/content/en/us/enterprise/fact_sheets/b-netbackup_appliance_5230_DS_21273484-1.en-us.pdf (“Flexible deduplication options—Deduplication at source or target; inline or post-process ... NetBackup 5230, a 2U appliance starting with 4 TB usable capacity for deduplication, is ideal for remote offices. ... The intelligent deduplication engine can see into actual objects in the backup stream for superior deduplication across all virtual and physical machines in your environment. ... The intelligent deduplication engine sees into the data stream and accurately identifies files and object boundaries for efficient deduplication delivering up

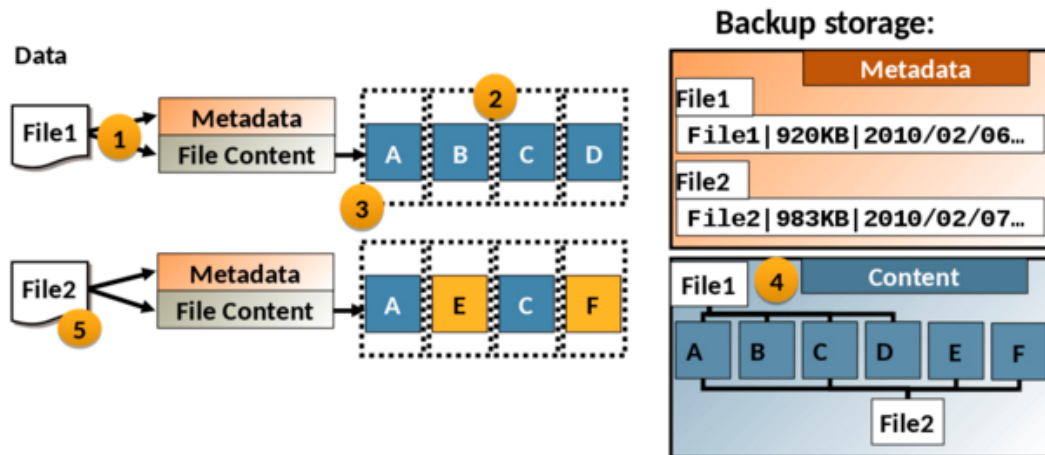
to 50x storage reduction and up to 99 percent bandwidth reduction for backups”).

17. The Accused Instrumentality performs content dependent data compression with a content dependent data compression encoder if a data type of the data block is identified. *See, e.g.,* <http://www.centurylink.com/business/asset/product-info/cloud-backup-faq-sf140477.pdf> (“After selecting files, your cloud backup software platform de-duplicates and compresses data in order to reduce transfer time.”); https://apps.centurylink.com/sites/default/files/SecureOnlineBackup_savvisdirect_ProductOverview_Dec13.pdf (“Secure Online Backup also includes other key advantages that provide you with additional business benefits such as — incremental only data backups, data compression techniques such as common file elimination and data deduplication”); <https://apps.centurylink.com/support/knowledgebase/top-reasons-deploy-file-backup-and-recovery-strategy> (“Data reduction through deduplication and compression”); <http://www.settlersoman.com/netbackup-media-server-deduplication-pool-msdp-overview/>:

With NetBackup MSDP client deduplication, clients deduplicate their backup data and then send it directly to the storage server, which writes it to the storage. The network traffic is reduced.

For all files to be de-duplicated:

1. De-duplication plugin Separates file metadata and contents.
2. The file contents are then Logically separated into segments.
3. Hash fingerprint of segments are taken.
4. Finger prints are identified for unique segments and then store all unique segments.
5. Process the data stream.



https://www.symantec.com/content/en/us/enterprise/fact_sheets/b-netbackup_appliance_5230_DS_21273484-1.en-us.pdf (“Flexible deduplication options—Deduplication at source or target; inline or post-process ... NetBackup 5230, a 2U appliance starting with 4 TB usable capacity for deduplication, is ideal for remote offices. ... The intelligent deduplication engine can see into actual objects in the backup stream for superior deduplication across all virtual and physical machines in your environment. ... The intelligent deduplication engine sees into the data stream and accurately identifies files and object boundaries for efficient deduplication delivering up to 50x storage reduction and up to 99 percent bandwidth reduction for backups”).

18. The Accused Instrumentality performs data compression with a single data compression encoder, if a data type of the data block is not identified. *See, e.g.,* <http://www.centurylink.com/business/asset/product-info/cloud-backup-faq-sf140477.pdf> (“After selecting files, your cloud backup software platform de-duplicates and

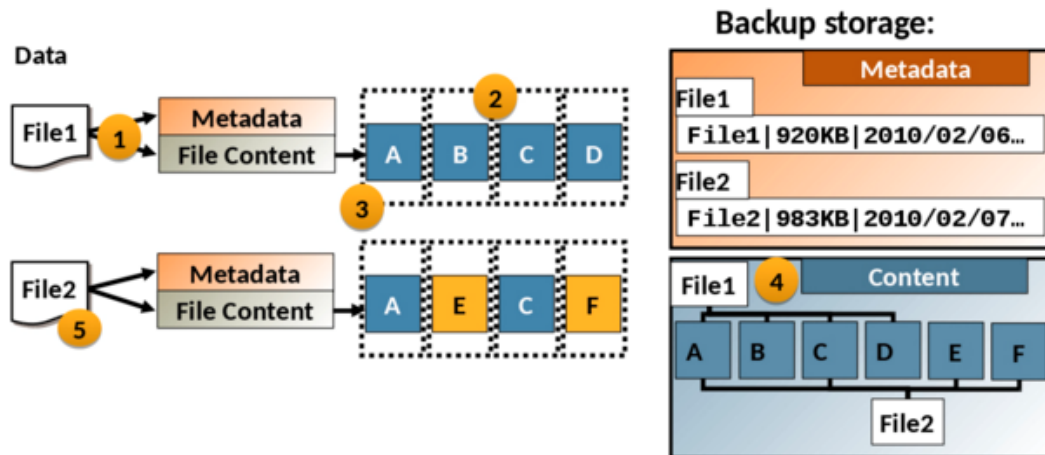
compresses data in order to reduce transfer time.”); https://www.veritas.com/support/en_US/article.000061574 (“NetBackup provides compression for the deduplicated data. It is separate from and different than NetBackup policy-based compression. By default, deduplication compression is enabled. Symantec recommends that you use the deduplication compression.”); http://webcache.googleusercontent.com/search?q=cache:J4186nVjYaIJ:bbs.norton.com/connect/pt-br/search/apachesolr_search/does%3Fpage%3D1317%26filters%3Dtid%253A1741%26solrsort%3Dcreated%2520desc%26facet_click%3D1+&cd=3&hl=en&ct=clnk&gl=us (“Does anyone know what compression algorithm netbackup uses? 0 Found out from our Veritas rep that it is Lempel-Ziv (LZ) compression.”).

19. In the Accused Instrumentality analyzing of the data within the data block to identify one or more data types excludes analyzing based only on a descriptor that is indicative of the data type of the data within the data block. *See, e.g.,* <http://www.centurylink.com/business/asset/product-info/cloud-backup-faq-sf140477.pdf> (“After selecting files, your cloud backup software platform de-duplicates and compresses data in order to reduce transfer time.”); https://apps.centurylink.com/sites/default/files/SecureOnlineBackup_savvisdirect_ProductOverview_Dec13.pdf (“Secure Online Backup also includes other key advantages that provide you with additional business benefits such as — incremental only data backups, data compression techniques such as common file elimination and data deduplication”); <https://apps.centurylink.com/support/knowledgebase/top-reasons-deploy-file-backup-and-recovery-strategy> (“Data reduction through deduplication and compression”); <http://www.settlersoman.com/netbackup-media-server-deduplication-pool-msdp-overview/>:

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https://www.symantec.com/content/en/us/enterprise/fact_sheets/b-netbackup_appliance_5230_DS_21273484-1.en-us.pdf

(“Flexible deduplication options—Deduplication at source or target; inline or post-process ... NetBackup 5230, a 2U appliance starting with 4 TB usable capacity for deduplication, is ideal for remote offices. ... The intelligent deduplication engine can see into actual objects in the backup stream for superior deduplication across all virtual and physical machines in your environment. ... The intelligent deduplication engine sees into the data stream and accurately identifies files and object boundaries for efficient deduplication delivering up to 50x storage reduction and up to 99 percent bandwidth reduction for backups”).

20. On information and belief, CenturyLink and Veritas also directly infringe and continue to infringe other claims of the ‘506 patent, for similar reasons as explained above with respect to Claim 104 of the ‘506 patent.

21. On information and belief, all of the Accused Instrumentalities perform

the claimed methods in substantially the same way. In particular, CenturyLink “Secure Online Backup” uses Veritas NetBackup software and/or NetBackup appliances. *See, e.g.,* https://cdn2.hubspot.net/hubfs/467348/Archive/CMT_CenturyLink_Veritas.pdf (“CenturyLink needed to optimize its daily backup of 1.5 petabytes in 52 data centers worldwide. It had been using Veritas NetBackup software with NetApp FAS3250 storage systems as targets. CMT proposed using Veritas NetBackup 5230 Appliances ... CenturyLink chose CMT’s proposal with NetBackup appliances because of the significant extra hardware cost avoided. ... CenturyLink expects to deploy 50 appliances in 10 data centers by the end of 2014, saving a projected \$5 million. The rollout will continue to all 52 data centers, and with 1.5 petabytes to back up daily (an amount that could double in two years), CenturyLink will be using hundreds of NetBackup appliances with projected savings in the range of tens of millions of dollars ... As a service provider, CenturyLink needs to be able to expand backup capacity fast, upon customer request. CMT has arranged for a just-in-time inventory of NetBackup appliances, pre-configured to CenturyLink standards, to be on the ground in key regions”); <https://jobs.centurylink.com/job/Town-And-Country-SR-IT-ENGINEER-MO-63017/315002600/> (CenturyLink job posting indicating “Working knowledge of ... Netbackup (installation, troubleshooting infrastructure and backup job failures)” is a “[p]referred skill[]” for a Senior IT Engineer position).

22. On information and belief, use of the Accused Instrumentality in its ordinary and customary fashion results in infringement of the methods claimed by the ‘506 patent.

23. On information and belief, CenturyLink and Veritas have had knowledge of the ‘506 patent since at least the filing of this Complaint or shortly thereafter, and on information and belief, CenturyLink and Veritas knew of the ‘506 patent and knew of their infringement, including by way of this lawsuit.

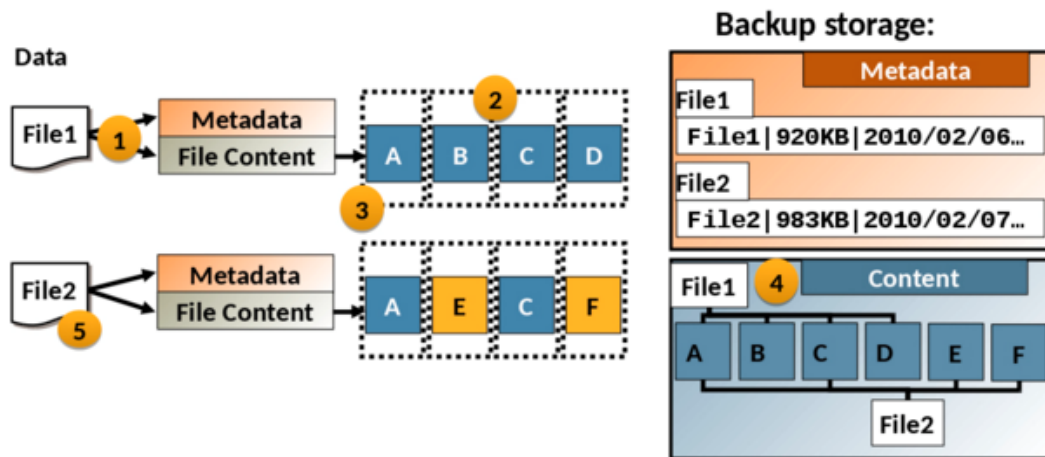
24. Upon information and belief, CenturyLink’s and Veritas’s affirmative acts

of making, using, and selling the Accused Instrumentalities, and providing implementation services and technical support to users of the Accused Instrumentalities, have induced and continue to induce users of the Accused Instrumentalities to use them in their normal and customary way to infringe Claim 104 of the '506 patent by practicing a computer implemented method comprising: receiving a data block in an uncompressed form, said data block being included in a data stream; analyzing data within the data block to determine a type of said data block; and compressing said data block to provide a compressed data block, wherein if one or more encoders are associated to said type, compressing said data block with at least one of said one or more encoders, otherwise compressing said data block with a default data compression encoder, and wherein the analyzing of the data within the data block to identify one or more data types excludes analyzing based only on a descriptor that is indicative of the data type of the data within the data block. For example, CenturyLink instructs users of Secure Online Backup about the advantages of its deduplication and compression features. *See, e.g.*, <http://www.centurylink.com/business/asset/product-info/cloud-backup-faq-sf140477.pdf> (“After selecting files, your cloud backup software platform de-duplicates and compresses data in order to reduce transfer time.”); https://apps.centurylink.com/sites/default/files/SecureOnlineBackup_savvisdirect_ProductOverview_Dec13.pdf (“Secure Online Backup also includes other key advantages that provide you with additional business benefits such as — incremental only data backups, data compression techniques such as common file elimination and data deduplication”); <https://apps.centurylink.com/support/knowledgebase/top-reasons-deploy-file-backup-and-recovery-strategy> (“Data reduction through deduplication and compression”). Veritas also instructs users of NetBackup about the advantages of its deduplication and compression features. *See, e.g.*, <http://www.settlersoman.com/netbackup-media-server-deduplication-pool-msdp-overview/>:

With NetBackup MSDP client deduplication, clients deduplicate their backup data and then send it directly to the storage server, which writes it to the storage. The network traffic is reduced.

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https://www.symantec.com/content/en/us/enterprise/fact_sheets/b-netbackup_appliance_5230_DS_21273484-1.en-us.pdf (“The intelligent deduplication engine sees into the data stream and accurately identifies files and object boundaries for efficient deduplication delivering up to 50x storage reduction and up to 99 percent bandwidth reduction for backups”); https://www.veritas.com/support/en_US/article.000061574 (“NetBackup provides compression for the deduplicated data. It is separate from and different than NetBackup policy-based compression. By default, deduplication compression is enabled. Symantec recommends that you use the deduplication compression.”). For similar reasons, CenturyLink and Veritas also induce their customers to use the Accused Instrumentalities to infringe other claims of the ‘506 patent. CenturyLink and Veritas specifically intended and were aware that these normal and customary activities would infringe the ‘506 patent. CenturyLink and Veritas performed the acts that constitute induced infringement, and

would induce actual infringement, with the knowledge of the ‘506 patent and with the knowledge, or willful blindness to the probability, that the induced acts would constitute infringement. On information and belief, CenturyLink and Veritas engaged in such inducement to promote the sales of the Accused Instrumentalities. Accordingly, CenturyLink and Veritas have induced and continue to induce users of the Accused Instrumentalities to use the Accused Instrumentalities in their ordinary and customary way to infringe the ‘506 patent, knowing that such use constitutes infringement of the ‘506 patent.

25. By making, using, offering for sale, selling and/or importing into the United States the Accused Instrumentalities, and touting the benefits of using the Accused Instrumentalities’ compression features, CenturyLink and Veritas have injured Realtime and are liable to Realtime for infringement of the ‘506 patent pursuant to 35 U.S.C. § 271.

26. As a result of CenturyLink and Veritas’s infringement of the ‘506 patent, Plaintiff Realtime is entitled to monetary damages in an amount adequate to compensate for CenturyLink and Veritas’s infringement, but in no event less than a reasonable royalty for the use made of the invention by CenturyLink and Veritas, together with interest and costs as fixed by the Court.

COUNT II
INFRINGEMENT OF U.S. PATENT NO. 9,054,728

27. Plaintiff Realtime realleges and incorporates by reference paragraphs 1-26 above, as if fully set forth herein.

28. Plaintiff Realtime is the owner by assignment of United States Patent No. 9,054,728 (“the ‘728 Patent”) entitled “Data compression systems and methods.” The ‘728 Patent was duly and legally issued by the United States Patent and Trademark Office on June 9, 2015. A true and correct copy of the ‘728 Patent is included as Exhibit

B.

Secure Online Backup / Veritas NetBackup

29. On information and belief, CenturyLink has made, used, offered for sale, sold and/or imported into the United States CenturyLink products that infringe the ‘728 patent, and continues to do so. By way of illustrative example, these infringing products include, without limitation, CenturyLink’s compression products and services, such as, *e.g.*, CenturyLink (formerly savvisdirect) Secure Online Backup⁹ and all versions and variations thereof since the issuance of the ‘728 patent (“Accused Instrumentality”).

30. On information and belief, Defendant CenturyLink’s Accused Instrumentality is provided to CenturyLink’s customers using Defendant Veritas’s NetBackup software and/or appliances. *See, e.g.*,

https://cdn2.hubspot.net/hubfs/467348/Archive/CMT_CenturyLink_Veritas.pdf

(“CenturyLink needed to optimize its daily backup of 1.5 petabytes in 52 data centers worldwide. It had been using Veritas NetBackup software with NetApp FAS3250 storage systems as targets. CMT proposed using Veritas NetBackup 5230 Appliances ... CenturyLink chose CMT’s proposal with NetBackup appliances because of the significant extra hardware cost avoided. ... CenturyLink expects to deploy 50 appliances in 10 data centers by the end of 2014, saving a projected \$5 million. The rollout will continue to all 52 data centers, and with 1.5 petabytes to back up daily (an amount that could double in two years), CenturyLink will be using hundreds of NetBackup appliances with projected savings in the range of tens of millions of dollars ... As a service provider, CenturyLink needs to be able to expand backup capacity fast, upon customer request. CMT has arranged for a just-in-time inventory of NetBackup appliances, pre-configured to CenturyLink standards, to be on the ground in key regions”); <https://jobs.centurylink.com/job/Town-And-Country-SR-IT-ENGINEER-MO->

⁹ <https://apps.centurylink.com/archiving-and-backup/secure-online-backup>

[63017/315002600/](#) (CenturyLink job posting indicating “Working knowledge of ... Netbackup (installation, troubleshooting infrastructure and backup job failures)” is a “[p]referred skill[]” for a Senior IT Engineer position).

31. On information and belief, Veritas has made, used, offered for sale, sold and/or imported into the United States Veritas products that infringe the ‘728 patent, and continues to do so. By way of illustrative example, these infringing products include, without limitation, Veritas’s compression products and services such as Veritas NetBackup (formerly Symantec NetBackup), Veritas NetBackup 5230 Appliances,¹⁰ and all versions and variations thereof since the issuance of the ‘728 patent (“Accused Instrumentality”).

32. On information and belief, CenturyLink and Veritas have directly infringed and continue to infringe the ‘728 patent, for example, through their own use and testing of the Accused Instrumentality, which constitute systems for compressing data claimed by Claim 1 of the ‘728 patent, comprising a processor; one or more content dependent data compression encoders; and a single data compression encoder; wherein the processor is configured: to analyze data within a data block to identify one or more parameters or attributes of the data wherein the analyzing of the data within the data block to identify the one or more parameters or attributes of the data excludes analyzing based solely on a descriptor that is indicative of the one or more parameters or attributes of the data within the data block; to perform content dependent data compression with the one or more content dependent data compression encoders if the one or more parameters or attributes of the data are identified; and to perform data compression with the single data compression encoder, if the one or more parameters or attributes of the data are not identified. Upon information and belief, CenturyLink and Veritas use the Accused Instrumentality to practice infringing methods for their own internal non-testing business

¹⁰ https://www.symantec.com/content/en/us/enterprise/fact_sheets/b-netbackup_appliance_5230_DS_21273484-1.en-us.pdf

purposes, while testing the Accused Instrumentality, and while providing technical support, maintenance and repair services for the Accused Instrumentality to CenturyLink's customers and Veritas's customers.

33. The Accused Instrumentality is a system for compressing data, comprising a processor and one or more content dependent data compression encoders. *See, e.g.,* <http://www.centurylink.com/business/asset/product-info/cloud-backup-faq-sf140477.pdf> (“After selecting files, your cloud backup software platform de-duplicates and compresses data in order to reduce transfer time.”); https://apps.centurylink.com/sites/default/files/SecureOnlineBackup_savvisdirect_ProductOverview_Dec13.pdf (“Secure Online Backup also includes other key advantages that provide you with additional business benefits such as — incremental only data backups, data compression techniques such as common file elimination and data deduplication”); <https://apps.centurylink.com/support/knowledgebase/top-reasons-deploy-file-backup-and-recovery-strategy> (“Data reduction through deduplication and compression”); <http://www.settlersoman.com/netbackup-media-server-deduplication-pool-msdp-overview/>:

This post covers Media Server Deduplication Storage Pool (MSDP) which is an embedded deduplication technology that ships and is installed with base NetBackup 7.6 software, and that is provided on NetBackup appliances running version 2.6 software. There are below benefits of deduplication:

- Reduce the amount of data that is stored.
- Reduce backup bandwidth.
- Reduce backup windows.
- Reduce infrastructure.

https://www.symantec.com/content/en/us/enterprise/fact_sheets/b-netbackup_appliance_5230_DS_21273484-1.en-us.pdf (“Flexible deduplication options—Deduplication at source or target; inline or post-process ... NetBackup 5230, a 2U appliance starting with 4 TB usable capacity for deduplication, is ideal for remote offices. ... The intelligent deduplication engine can see into actual objects in the backup

stream for superior deduplication across all virtual and physical machines in your environment. ... The intelligent deduplication engine sees into the data stream and accurately identifies files and object boundaries for efficient deduplication delivering up to 50x storage reduction and up to 99 percent bandwidth reduction for backups”).

34. The Accused Instrumentality uses a single data compression encoder. *See, e.g.,* <http://www.centurylink.com/business/asset/product-info/cloud-backup-faq-sf140477.pdf> (“After selecting files, your cloud backup software platform de-duplicates and compresses data in order to reduce transfer time.”); https://www.veritas.com/support/en_US/article.000061574 (“NetBackup provides compression for the deduplicated data. It is separate from and different than NetBackup policy-based compression. By default, deduplication compression is enabled. Symantec recommends that you use the deduplication compression.”); http://webcache.googleusercontent.com/search?q=cache:J4186nVjYaIJ:bbs.norton.com/connect/pt-br/search/apachesolr_search/does%3Fpage%3D1317%26filters%3Dtid%253A1741%26solrsort%3Dcreated%2520desc%26facet_click%3D1+&cd=3&hl=en&ct=clnk&gl=us (“Does anyone know what compression algorithm netbackup uses? 0 Found out from our Veritas rep that it is Lempel-Ziv (LZ) compression.”).

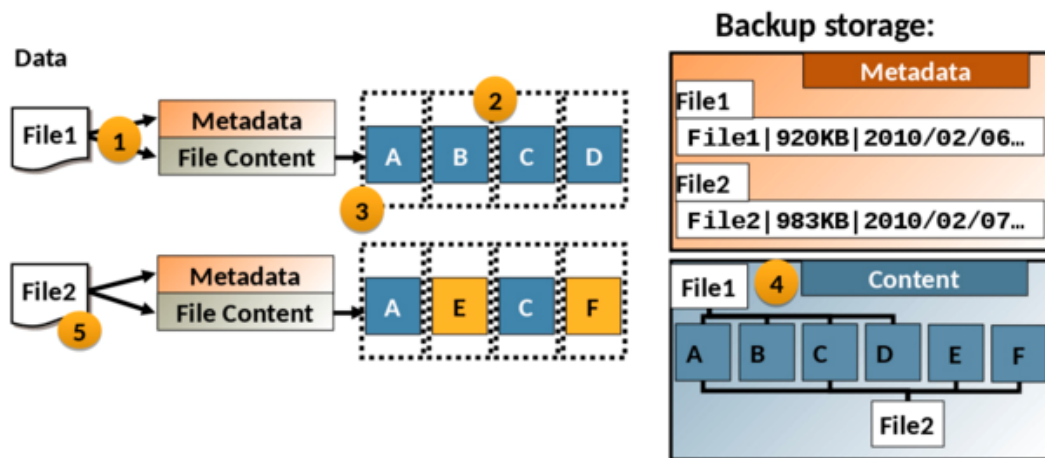
35. The Accused Instrumentality analyzes data within a data block to identify one or more parameters or attributes of the data wherein the analyzing of the data within the data block to identify the one or more parameters or attributes of the data excludes analyzing based solely on a descriptor that is indicative of the one or more parameters or attributes of the data within the data block. *See, e.g.,* <http://www.centurylink.com/business/asset/product-info/cloud-backup-faq-sf140477.pdf> (“After selecting files, your cloud backup software platform de-duplicates and compresses data in order to reduce transfer time.”); https://apps.centurylink.com/sites/default/files/SecureOnlineBackup_savvisdirect_Produc

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With NetBackup MSDP client deduplication, clients deduplicate their backup data and then send it directly to the storage server, which writes it to the storage. The network traffic is reduced.

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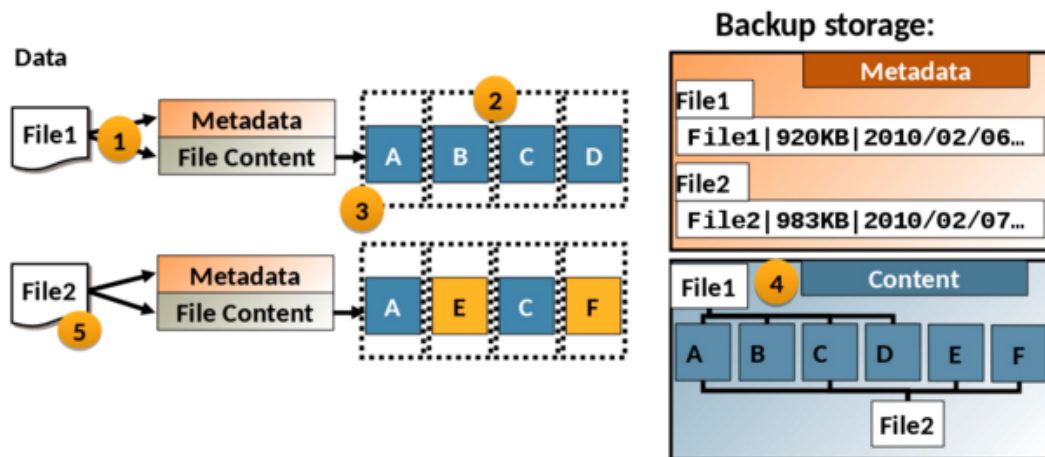
environment. ... The intelligent deduplication engine sees into the data stream and accurately identifies files and object boundaries for efficient deduplication delivering up to 50x storage reduction and up to 99 percent bandwidth reduction for backups”).

36. The Accused Instrumentality performs content dependent data compression with the one or more content dependent data compression encoders if the one or more parameters or attributes of the data are identified. *See, e.g.,* <http://www.centurylink.com/business/asset/product-info/cloud-backup-faq-sf140477.pdf> (“After selecting files, your cloud backup software platform de-duplicates and compresses data in order to reduce transfer time.”); https://apps.centurylink.com/sites/default/files/SecureOnlineBackup_savvisdirect_ProductOverview_Dec13.pdf (“Secure Online Backup also includes other key advantages that provide you with additional business benefits such as — incremental only data backups, data compression techniques such as common file elimination and data deduplication”); <https://apps.centurylink.com/support/knowledgebase/top-reasons-deploy-file-backup-and-recovery-strategy> (“Data reduction through deduplication and compression”); <http://www.settlersoman.com/netbackup-media-server-deduplication-pool-msdp-overview/>:

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37. The Accused Instrumentality performs data compression with the single data compression encoder, if the one or more parameters or attributes of the data are not identified. See, e.g., <http://www.centurylink.com/business/asset/product-info/cloud-backup-faq-sf140477.pdf> (“After selecting files, your cloud backup software platform de-

duplicates and compresses data in order to reduce transfer time.”); https://www.veritas.com/support/en_US/article.000061574 (“NetBackup provides compression for the deduplicated data. It is separate from and different than NetBackup policy-based compression. By default, deduplication compression is enabled. Symantec recommends that you use the deduplication compression.”); http://webcache.googleusercontent.com/search?q=cache:J4186nVjYaIJ:bbs.norton.com/connect/pt-br/search/apachesolr_search/does%3Fpage%3D1317%26filters%3Dtid%253A1741%26solrsort%3Dcreated%2520desc%26facet_click%3D1+&cd=3&hl=en&ct=clnk&gl=us (“Does anyone know what compression algorithm netbackup uses? 0 Found out from our Veritas rep that it is Lempel-Ziv (LZ) compression.”).

38. On information and belief, CenturyLink and Veritas also directly infringe and continue to infringe other claims of the ‘728 patent, for similar reasons as explained above with respect to Claim 1 of the ‘728 patent.

39. On information and belief, all of the Accused Instrumentalities perform the claimed methods in substantially the same way. In particular, CenturyLink “Secure Online Backup” uses Veritas NetBackup software and/or NetBackup appliances. *See, e.g.,* https://cdn2.hubspot.net/hubfs/467348/Archive/CMT_CenturyLink_Veritas.pdf (“CenturyLink needed to optimize its daily backup of 1.5 petabytes in 52 data centers worldwide. It had been using Veritas NetBackup software with NetApp FAS3250 storage systems as targets. CMT proposed using Veritas NetBackup 5230 Appliances ... CenturyLink chose CMT’s proposal with NetBackup appliances because of the significant extra hardware cost avoided. ... CenturyLink expects to deploy 50 appliances in 10 data centers by the end of 2014, saving a projected \$5 million. The rollout will continue to all 52 data centers, and with 1.5 petabytes to back up daily (an amount that could double in two years), CenturyLink will be using hundreds of NetBackup appliances with projected savings in the range of tens of millions of dollars ... As a service provider,

CenturyLink needs to be able to expand backup capacity fast, upon customer request. CMT has arranged for a just-in-time inventory of NetBackup appliances, pre-configured to CenturyLink standards, to be on the ground in key regions”); <https://jobs.centurylink.com/job/Town-And-Country-SR-IT-ENGINEER-MO-63017/315002600/> (CenturyLink job posting indicating “Working knowledge of ... Netbackup (installation, troubleshooting infrastructure and backup job failures)” is a “[p]referred skill[]” for a Senior IT Engineer position).

40. On information and belief, use of the Accused Instrumentality in its ordinary and customary fashion results in infringement of the systems claimed by the ‘728 patent.

41. On information and belief, CenturyLink and Veritas have had knowledge of the ‘728 patent since at least the filing of this Complaint or shortly thereafter, and on information and belief, CenturyLink and Veritas knew of the ‘728 patent and knew of their infringement, including by way of this lawsuit.

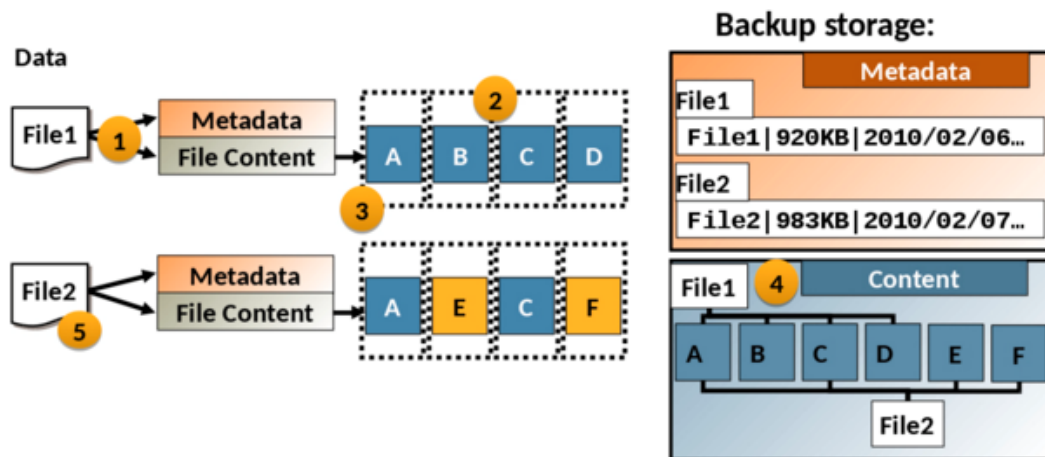
42. Upon information and belief, CenturyLink and Veritas’s affirmative acts of making, using, and selling the Accused Instrumentalities, and providing implementation services and technical support to users of the Accused Instrumentalities, have induced and continue to induce users of the Accused Instrumentalities to use them in their normal and customary way to infringe the ‘728 patent by making or using a system for compressing data comprising a processor; one or more content dependent data compression encoders; and a single data compression encoder; wherein the processor is configured: to analyze data within a data block to identify one or more parameters or attributes of the data wherein the analyzing of the data within the data block to identify the one or more parameters or attributes of the data excludes analyzing based solely on a descriptor that is indicative of the one or more parameters or attributes of the data within the data block; to perform content dependent data compression with the one or more content dependent data compression encoders if the one or more parameters or attributes

of the data are identified; and to perform data compression with the single data compression encoder, if the one or more parameters or attributes of the data are not identified. For example, CenturyLink instructs users of Secure Online Backup about the advantages of its deduplication and compression features. *See, e.g.,* <http://www.centurylink.com/business/asset/product-info/cloud-backup-faq-sf140477.pdf> (“After selecting files, your cloud backup software platform de-duplicates and compresses data in order to reduce transfer time.”); https://apps.centurylink.com/sites/default/files/SecureOnlineBackup_savvisdirect_ProductOverview_Dec13.pdf (“Secure Online Backup also includes other key advantages that provide you with additional business benefits such as — incremental only data backups, data compression techniques such as common file elimination and data deduplication”); <https://apps.centurylink.com/support/knowledgebase/top-reasons-deploy-file-backup-and-recovery-strategy> (“Data reduction through deduplication and compression”). Veritas also instructs users of NetBackup about the advantages of its deduplication and compression features. *See, e.g.,* <http://www.settlersoman.com/netbackup-media-server-deduplication-pool-msdp-overview/>:

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would induce actual infringement, with the knowledge of the '728 patent and with the knowledge, or willful blindness to the probability, that the induced acts would constitute infringement. On information and belief, CenturyLink and Veritas engaged in such inducement to promote the sales of the Accused Instrumentalities. Accordingly, CenturyLink and Veritas have induced and continue to induce users of the Accused Instrumentalities to use the Accused Instrumentalities in their ordinary and customary way to infringe the '728 patent, knowing that such use constitutes infringement of the '728 patent.

43. By making, using, offering for sale, selling and/or importing into the United States the Accused Instrumentalities, and touting the benefits of using the Accused Instrumentalities' compression features, CenturyLink and Veritas have injured Realtime and are liable to Realtime for infringement of the '728 patent pursuant to 35 U.S.C. § 271.

44. As a result of CenturyLink and Veritas's infringement of the '728 patent, Plaintiff Realtime is entitled to monetary damages in an amount adequate to compensate for CenturyLink and Veritas's infringement, but in no event less than a reasonable royalty for the use made of the invention by CenturyLink and Veritas, together with interest and costs as fixed by the Court.

COUNT III

INFRINGEMENT OF U.S. PATENT NO. 8,643,513

45. Plaintiff realleges and incorporates by reference paragraphs 1-44 above, as if fully set forth herein.

46. Plaintiff Realtime is the owner by assignment of United States Patent No. 8,643,513 ("the '513 patent") entitled "Data compression systems and methods." The '513 patent was duly and legally issued by the United States Patent and Trademark Office on February 4, 2014. A true and correct copy of the '513 patent is included as Exhibit C.

Secure Online Backup / Veritas NetBackup

47. On information and belief, CenturyLink has made, used, offered for sale, sold and/or imported into the United States CenturyLink products that infringe the ‘513 patent, and continues to do so. By way of illustrative example, these infringing products include, without limitation, CenturyLink’s compression products and services, such as, *e.g.*, CenturyLink (formerly savvisdirect) Secure Online Backup¹¹ and all versions and variations thereof since the issuance of the ‘513 patent (“Accused Instrumentality”).

48. On information and belief, Defendant CenturyLink’s Accused Instrumentality is provided to CenturyLink’s customers using Defendant Veritas’s NetBackup software and/or appliances. *See, e.g.,*

https://cdn2.hubspot.net/hubfs/467348/Archive/CMT_CenturyLink_Veritas.pdf

(“CenturyLink needed to optimize its daily backup of 1.5 petabytes in 52 data centers worldwide. It had been using Veritas NetBackup software with NetApp FAS3250 storage systems as targets. CMT proposed using Veritas NetBackup 5230 Appliances ... CenturyLink chose CMT’s proposal with NetBackup appliances because of the significant extra hardware cost avoided. ... CenturyLink expects to deploy 50 appliances in 10 data centers by the end of 2014, saving a projected \$5 million. The rollout will continue to all 52 data centers, and with 1.5 petabytes to back up daily (an amount that could double in two years), CenturyLink will be using hundreds of NetBackup appliances with projected savings in the range of tens of millions of dollars ... As a service provider, CenturyLink needs to be able to expand backup capacity fast, upon customer request. CMT has arranged for a just-in-time inventory of NetBackup appliances, pre-configured to CenturyLink standards, to be on the ground in key regions”); <https://jobs.centurylink.com/job/Town-And-Country-SR-IT-ENGINEER-MO-63017/315002600/> (CenturyLink job posting indicating “Working knowledge of ...

¹¹ <https://apps.centurylink.com/archiving-and-backup/secure-online-backup>

Netbackup (installation, troubleshooting infrastructure and backup job failures)” is a “[p]referred skill[]” for a Senior IT Engineer position).

49. On information and belief, Veritas has made, used, offered for sale, sold and/or imported into the United States Veritas products that infringe the ‘513 patent, and continues to do so. By way of illustrative example, these infringing products include, without limitation, Veritas’s compression products and services such as Veritas NetBackup (formerly Symantec NetBackup), Veritas NetBackup 5230 Appliances,¹² and all versions and variations thereof since the issuance of the ‘513 patent (“Accused Instrumentality”).

50. On information and belief, CenturyLink and Veritas have directly infringed and continue to infringe the ‘513 patent, for example, through their own use and testing of the Accused Instrumentality to practice compression methods claimed by Claim 1 of the ‘513 patent, namely, a method of compressing a plurality of data blocks, comprising: analyzing the plurality of data blocks to recognize when an appropriate content independent compression algorithm is to be applied to the plurality of data blocks; applying the appropriate content independent data compression algorithm to a portion of the plurality of data blocks to provide a compressed data portion; analyzing a data block from another portion of the plurality of data blocks for recognition of any characteristic, attribute, or parameter that is indicative of an appropriate content dependent algorithm to apply to the data block; and applying the appropriate content dependent data compression algorithm to the data block to provide a compressed data block when the characteristic, attribute, or parameter is identified, wherein the analyzing the plurality of data blocks to recognize when the appropriate content independent compression algorithm is to be applied excludes analyzing based only on a descriptor indicative of the any characteristic, attribute, or parameter, and wherein the analyzing the

¹² https://www.symantec.com/content/en/us/enterprise/fact_sheets/b-netbackup_appliance_5230_DS_21273484-1.en-us.pdf

data block to recognize the any characteristic, attribute, or parameter excludes analyzing based only on the descriptor. Upon information and belief, CenturyLink and Veritas use the Accused Instrumentality to practice infringing methods for their own internal non-testing business purposes, while testing the Accused Instrumentality, and while providing technical support, maintenance and repair services for the Accused Instrumentality to CenturyLink's customers and Veritas's customers.

51. The Accused Instrumentality compresses a plurality of data blocks, analyzing them to recognize when an appropriate content independent compression algorithm is to be applied to the plurality of data blocks, and then applying the appropriate content independent data compression algorithm to a portion of the plurality of data blocks to provide a compressed data portion. *See, e.g.,* <http://www.centurylink.com/business/asset/product-info/cloud-backup-faq-sf140477.pdf> (“After selecting files, your cloud backup software platform de-duplicates and compresses data in order to reduce transfer time.”); https://www.veritas.com/support/en_US/article.000061574 (“NetBackup provides compression for the deduplicated data. It is separate from and different than NetBackup policy-based compression. By default, deduplication compression is enabled. Symantec recommends that you use the deduplication compression.”); http://webcache.googleusercontent.com/search?q=cache:J4186nVjYaIJ:bbs.norton.com/connect/pt-br/search/apachesolr_search/does%3Fpage%3D1317%26filters%3Dtid%253A1741%26solrsort%3Dcreated%2520desc%26facet_click%3D1+&cd=3&hl=en&ct=clnk&gl=us (“Does anyone know what compression algorithm netbackup uses? 0 Found out from our Veritas rep that it is Lempel-Ziv (LZ) compression.”).

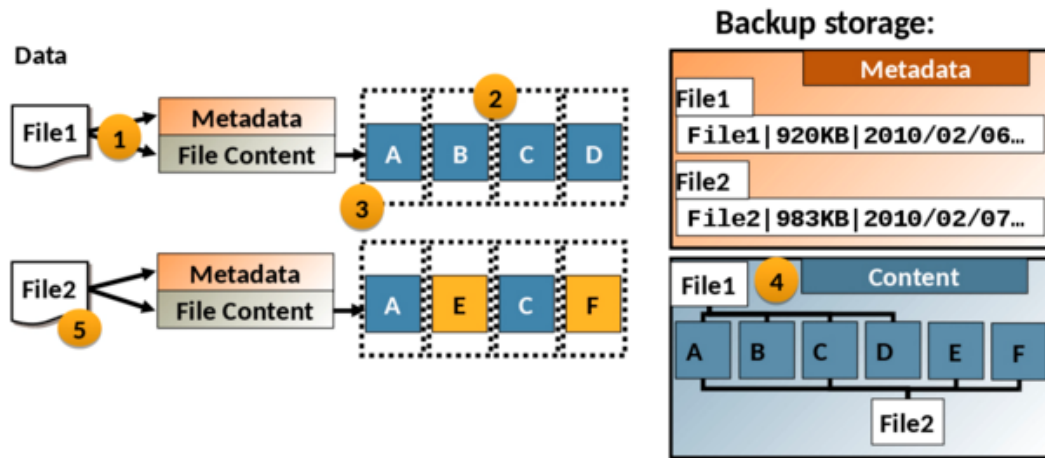
52. The Accused Instrumentality analyzes a data block from another portion of the plurality of data blocks for recognition of any characteristic, attribute, or parameter that is indicative of an appropriate content dependent algorithm to apply to the data

block; and then applies the appropriate content dependent data compression algorithm to the data block to provide a compressed data block when the characteristic, attribute, or parameter is identified, wherein the analyzing the plurality of data blocks to recognize when the appropriate content independent compression algorithm is to be applied excludes analyzing based only on a descriptor indicative of the any characteristic, attribute, or parameter, and wherein the analyzing the data block to recognize the any characteristic, attribute, or parameter excludes analyzing based only on the descriptor. *See, e.g.,* <http://www.centurylink.com/business/asset/product-info/cloud-backup-faq-sf140477.pdf> (“After selecting files, your cloud backup software platform de-duplicates and compresses data in order to reduce transfer time.”); https://apps.centurylink.com/sites/default/files/SecureOnlineBackup_savvisdirect_ProductOverview_Dec13.pdf (“Secure Online Backup also includes other key advantages that provide you with additional business benefits such as — incremental only data backups, data compression techniques such as common file elimination and data deduplication”); <https://apps.centurylink.com/support/knowledgebase/top-reasons-deploy-file-backup-and-recovery-strategy> (“Data reduction through deduplication and compression”); <http://www.settlersoman.com/netbackup-media-server-deduplication-pool-msdp-overview/>:

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53. On information and belief, CenturyLink and Veritas also directly infringe and continue to infringe other claims of the ‘513 patent, for similar reasons as explained above with respect to Claim 1 of the ‘513 patent.

54. On information and belief, all of the Accused Instrumentalities perform

the claimed methods in substantially the same way. In particular, CenturyLink “Secure Online Backup” uses Veritas NetBackup software and/or NetBackup appliances. *See, e.g.,* https://cdn2.hubspot.net/hubfs/467348/Archive/CMT_CenturyLink_Veritas.pdf (“CenturyLink needed to optimize its daily backup of 1.5 petabytes in 52 data centers worldwide. It had been using Veritas NetBackup software with NetApp FAS3250 storage systems as targets. CMT proposed using Veritas NetBackup 5230 Appliances ... CenturyLink chose CMT’s proposal with NetBackup appliances because of the significant extra hardware cost avoided. ... CenturyLink expects to deploy 50 appliances in 10 data centers by the end of 2014, saving a projected \$5 million. The rollout will continue to all 52 data centers, and with 1.5 petabytes to back up daily (an amount that could double in two years), CenturyLink will be using hundreds of NetBackup appliances with projected savings in the range of tens of millions of dollars ... As a service provider, CenturyLink needs to be able to expand backup capacity fast, upon customer request. CMT has arranged for a just-in-time inventory of NetBackup appliances, pre-configured to CenturyLink standards, to be on the ground in key regions”); <https://jobs.centurylink.com/job/Town-And-Country-SR-IT-ENGINEER-MO-63017/315002600/> (CenturyLink job posting indicating “Working knowledge of ... Netbackup (installation, troubleshooting infrastructure and backup job failures)” is a “[p]referred skill[]” for a Senior IT Engineer position).

55. On information and belief, use of the Accused Instrumentality in its ordinary and customary fashion results in infringement of the methods claimed by the ‘513 patent.

56. On information and belief, CenturyLink and Veritas have had knowledge of the ‘513 patent since at least the filing of the original Complaint or shortly thereafter, and on information and belief, CenturyLink and Veritas knew of the ‘513 patent and knew of their infringement, including by way of this lawsuit.

57. Upon information and belief, CenturyLink and Veritas’s affirmative acts

of making, using, and selling the Accused Instrumentalities, and providing implementation services and technical support to users of the Accused Instrumentalities, have induced and continue to induce users of the Accused Instrumentalities to use them in their normal and customary way to infringe Claim 1 of the '513 patent by practicing a method of compressing a plurality of data blocks, comprising: analyzing the plurality of data blocks to recognize when an appropriate content independent compression algorithm is to be applied to the plurality of data blocks; applying the appropriate content independent data compression algorithm to a portion of the plurality of data blocks to provide a compressed data portion; analyzing a data block from another portion of the plurality of data blocks for recognition of any characteristic, attribute, or parameter that is indicative of an appropriate content dependent algorithm to apply to the data block; and applying the appropriate content dependent data compression algorithm to the data block to provide a compressed data block when the characteristic, attribute, or parameter is identified, wherein the analyzing the plurality of data blocks to recognize when the appropriate content independent compression algorithm is to be applied excludes analyzing based only on a descriptor indicative of the any characteristic, attribute, or parameter, and wherein the analyzing the data block to recognize the any characteristic, attribute, or parameter excludes analyzing based only on the descriptor. For example, CenturyLink instructs users of Secure Online Backup about the advantages of its deduplication and compression features. *See, e.g.,* <http://www.centurylink.com/business/asset/product-info/cloud-backup-faq-sf140477.pdf> (“After selecting files, your cloud backup software platform de-duplicates and compresses data in order to reduce transfer time.”); https://apps.centurylink.com/sites/default/files/SecureOnlineBackup_savvisdirect_ProductOverview_Dec13.pdf (“Secure Online Backup also includes other key advantages that provide you with additional business benefits such as — incremental only data backups, data compression techniques such as common file elimination and data deduplication”);

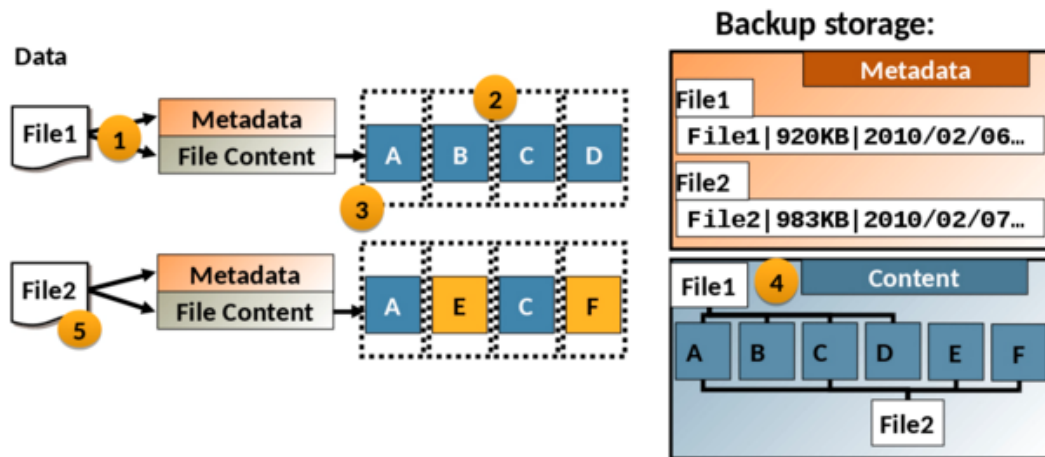
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https://www.symantec.com/content/en/us/enterprise/fact_sheets/b-netbackup_appliance_5230_DS_21273484-1.en-us.pdf (“The intelligent deduplication engine sees into the data stream and accurately identifies files and object boundaries for efficient deduplication delivering up to 50x storage reduction and up to 99 percent bandwidth reduction for backups”); https://www.veritas.com/support/en_US/article.000061574 (“NetBackup provides compression for the deduplicated data. It is separate from and different than NetBackup policy-based compression. By default, deduplication compression is enabled. Symantec

recommends that you use the deduplication compression.”). For similar reasons, CenturyLink and Veritas also induce their customers to use the Accused Instrumentalities to infringe other claims of the ‘513 patent. CenturyLink and Veritas specifically intended and were aware that these normal and customary activities would infringe the ‘513 patent. CenturyLink and Veritas performed the acts that constitute induced infringement, and would induce actual infringement, with the knowledge of the ‘513 patent and with the knowledge, or willful blindness to the probability, that the induced acts would constitute infringement. On information and belief, CenturyLink and Veritas engaged in such inducement to promote the sales of the Accused Instrumentalities. Accordingly, CenturyLink and Veritas have induced and continue to induce users of the Accused Instrumentalities to use the Accused Instrumentalities in their ordinary and customary way to infringe the ‘513 patent, knowing that such use constitutes infringement of the ‘513 patent.

58. By making, using, offering for sale, selling and/or importing into the United States the Accused Instrumentalities, and touting the benefits of using the Accused Instrumentalities’ compression features, CenturyLink and Veritas have injured Realtime and are liable to Realtime for infringement of the ‘513 patent pursuant to 35 U.S.C. § 271.

59. As a result of CenturyLink and Veritas’s infringement of the ‘513 patent, Plaintiff Realtime is entitled to monetary damages in an amount adequate to compensate for CenturyLink and Veritas’s infringement, but in no event less than a reasonable royalty for the use made of the invention by CenturyLink and Veritas, together with interest and costs as fixed by the Court.

COUNT IV

INFRINGEMENT OF U.S. PATENT NO. 9,116,908

60. Plaintiff Realtime realleges and incorporates by reference paragraphs 1-59

above, as if fully set forth herein.

61. Plaintiff Realtime is the owner by assignment of United States Patent No. 9,116,908 (“the ‘908 Patent”) entitled “System and methods for accelerated data storage and retrieval.” The ‘908 Patent was duly and legally issued by the United States Patent and Trademark Office on August 25, 2015. A true and correct copy of the ‘908 Patent is included as Exhibit D.

Secure Online Backup / Veritas NetBackup

62. On information and belief, CenturyLink has made, used, offered for sale, sold and/or imported into the United States CenturyLink products that infringe the ‘908 patent, and continues to do so. By way of illustrative example, these infringing products include, without limitation, CenturyLink’s compression products and services, such as, *e.g.*, CenturyLink (formerly savvisdirect) Secure Online Backup¹³ and all versions and variations thereof since the issuance of the ‘908 patent (“Accused Instrumentality”).

63. On information and belief, Defendant CenturyLink’s Accused Instrumentality is provided to CenturyLink’s customers using Defendant Veritas’s NetBackup software and/or appliances. *See, e.g.*,

https://cdn2.hubspot.net/hubfs/467348/Archive/CMT_CenturyLink_Veritas.pdf

(“CenturyLink needed to optimize its daily backup of 1.5 petabytes in 52 data centers worldwide. It had been using Veritas NetBackup software with NetApp FAS3250 storage systems as targets. CMT proposed using Veritas NetBackup 5230 Appliances ... CenturyLink chose CMT’s proposal with NetBackup appliances because of the significant extra hardware cost avoided. ... CenturyLink expects to deploy 50 appliances in 10 data centers by the end of 2014, saving a projected \$5 million. The rollout will continue to all 52 data centers, and with 1.5 petabytes to back up daily (an amount that could double in two years), CenturyLink will be using hundreds of NetBackup appliances

¹³ <https://apps.centurylink.com/archiving-and-backup/secure-online-backup>

with projected savings in the range of tens of millions of dollars ... As a service provider, CenturyLink needs to be able to expand backup capacity fast, upon customer request. CMT has arranged for a just-in-time inventory of NetBackup appliances, pre-configured to CenturyLink standards, to be on the ground in key regions”); <https://jobs.centurylink.com/job/Town-And-Country-SR-IT-ENGINEER-MO-63017/315002600/> (CenturyLink job posting indicating “Working knowledge of ... Netbackup (installation, troubleshooting infrastructure and backup job failures)” is a “[p]referred skill[]” for a Senior IT Engineer position).

64. On information and belief, Veritas has made, used, offered for sale, sold and/or imported into the United States Veritas products that infringe the ‘908 patent, and continues to do so. By way of illustrative example, these infringing products include, without limitation, Veritas’s compression products and services such as Veritas NetBackup (formerly Symantec NetBackup), Veritas NetBackup 5230 Appliances,¹⁴ and all versions and variations thereof since the issuance of the ‘908 patent (“Accused Instrumentality”).

65. On information and belief, CenturyLink and Veritas have directly infringed and continue to infringe the ‘908 patent, for example, through their own use and testing of the Accused Instrumentality, which constitutes a system comprising: a memory device; and a data accelerator configured to compress: (i) a first data block with a first compression technique to provide a first compressed data block; and (ii) a second data block with a second compression technique, different from the first compression technique, to provide a second compressed data block; wherein the compressed first and second data blocks are stored on the memory device, and the compression and storage occurs faster than the first and second data blocks are able to be stored on the memory device in uncompressed form. Upon information and belief, CenturyLink and Veritas use

¹⁴ https://www.symantec.com/content/en/us/enterprise/fact_sheets/b-netbackup_appliance_5230_DS_21273484-1.en-us.pdf

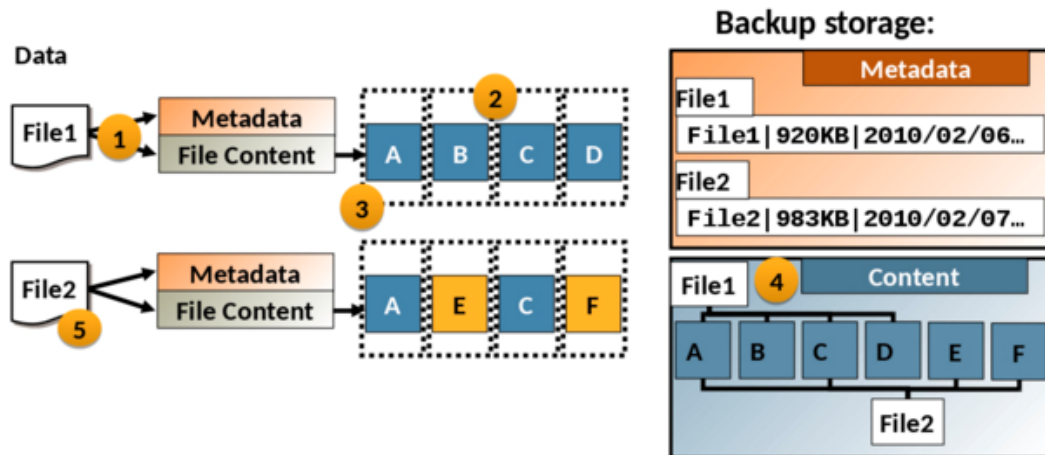
the Accused Instrumentality to practice infringing methods for their own internal non-testing business purposes, while testing the Accused Instrumentality, and while providing technical support, maintenance and repair services for the Accused Instrumentality to CenturyLink's customers and Veritas's customers.

66. The Accused Instrumentality evidently includes a memory device and a data accelerator configured to compress: (i) a first data block with a first compression technique to provide a first compressed data block; and (ii) a second data block with a second compression technique, different from the first compression technique, to provide a second compressed data block. *See, e.g.,* <http://www.centurylink.com/business/asset/product-info/cloud-backup-faq-sf140477.pdf> (“After selecting files, your cloud backup software platform de-duplicates and compresses data in order to reduce transfer time.”); https://apps.centurylink.com/sites/default/files/SecureOnlineBackup_savvisdirect_ProductOverview_Dec13.pdf (“Secure Online Backup also includes other key advantages that provide you with additional business benefits such as — incremental only data backups, data compression techniques such as common file elimination and data deduplication”); <https://apps.centurylink.com/support/knowledgebase/top-reasons-deploy-file-backup-and-recovery-strategy> (“Data reduction through deduplication and compression”); <http://www.settlersoman.com/netbackup-media-server-deduplication-pool-msdp-overview/>:

With NetBackup MSDP client deduplication, clients deduplicate their backup data and then send it directly to the storage server, which writes it to the storage. The network traffic is reduced.

For all files to be de-duplicated:

1. De-duplication plugin Separates file metadata and contents.
2. The file contents are then Logically separated into segments.
3. Hash fingerprint of segments are taken.
4. Finger prints are identified for unique segments and then store all unique segments.
5. Process the data stream.



https://www.symantec.com/content/en/us/enterprise/fact_sheets/b-netbackup_appliance_5230_DS_21273484-1.en-us.pdf (“The intelligent deduplication engine sees into the data stream and accurately identifies files and object boundaries for efficient deduplication delivering up to 50x storage reduction and up to 99 percent bandwidth reduction for backups”); https://www.veritas.com/support/en_US/article.000061574 (“NetBackup provides compression for the deduplicated data. It is separate from and different than NetBackup policy-based compression. By default, deduplication compression is enabled. Symantec recommends that you use the deduplication compression.”).

67. The Accused Instrumentality stores the compressed first and second data blocks on the memory device, and the compression and storage occurs faster than the first and second data blocks are able to be stored on the memory device in uncompressed form. See, e.g., <http://www.centurylink.com/business/asset/product-info/cloud-backup-faq->

[sf140477.pdf](#) (“After selecting files, your cloud backup software platform de-duplicates and compresses data in order to reduce transfer time.”); https://www.symantec.com/content/en/us/enterprise/fact_sheets/b-netbackup_appliance_5230_DS_21273484-1.en-us.pdf (“The intelligent deduplication engine sees into the data stream and accurately identifies files and object boundaries for efficient deduplication delivering up to 50x storage reduction and up to 99 percent bandwidth reduction for backups”).

68. On information and belief, CenturyLink and Veritas also directly infringe and continue to infringe other claims of the ‘908 patent, for similar reasons as explained above with respect to Claim 1 of the ‘908 patent.

69. On information and belief, all of the Accused Instrumentalities perform the claimed methods in substantially the same way. In particular, CenturyLink “Secure Online Backup” uses Veritas NetBackup software and/or NetBackup appliances. *See, e.g.,* https://cdn2.hubspot.net/hubfs/467348/Archive/CMT_CenturyLink_Veritas.pdf (“CenturyLink needed to optimize its daily backup of 1.5 petabytes in 52 data centers worldwide. It had been using Veritas NetBackup software with NetApp FAS3250 storage systems as targets. CMT proposed using Veritas NetBackup 5230 Appliances ... CenturyLink chose CMT’s proposal with NetBackup appliances because of the significant extra hardware cost avoided. ... CenturyLink expects to deploy 50 appliances in 10 data centers by the end of 2014, saving a projected \$5 million. The rollout will continue to all 52 data centers, and with 1.5 petabytes to back up daily (an amount that could double in two years), CenturyLink will be using hundreds of NetBackup appliances with projected savings in the range of tens of millions of dollars ... As a service provider, CenturyLink needs to be able to expand backup capacity fast, upon customer request. CMT has arranged for a just-in-time inventory of NetBackup appliances, pre-configured to CenturyLink standards, to be on the ground in key regions”); <https://jobs.centurylink.com/job/Town-And-Country-SR-IT-ENGINEER-MO->

[63017/315002600/](#) (CenturyLink job posting indicating “Working knowledge of ... Netbackup (installation, troubleshooting infrastructure and backup job failures)” is a “[p]referred skill[]” for a Senior IT Engineer position).

70. On information and belief, use of the Accused Instrumentality in its ordinary and customary fashion results in infringement of the systems claimed by the ‘908 patent.

71. On information and belief, CenturyLink and Veritas have had knowledge of the ‘908 patent since at least the filing of this Complaint or shortly thereafter, and on information and belief, CenturyLink and Veritas knew of the ‘908 patent and knew of their infringement, including by way of this lawsuit.

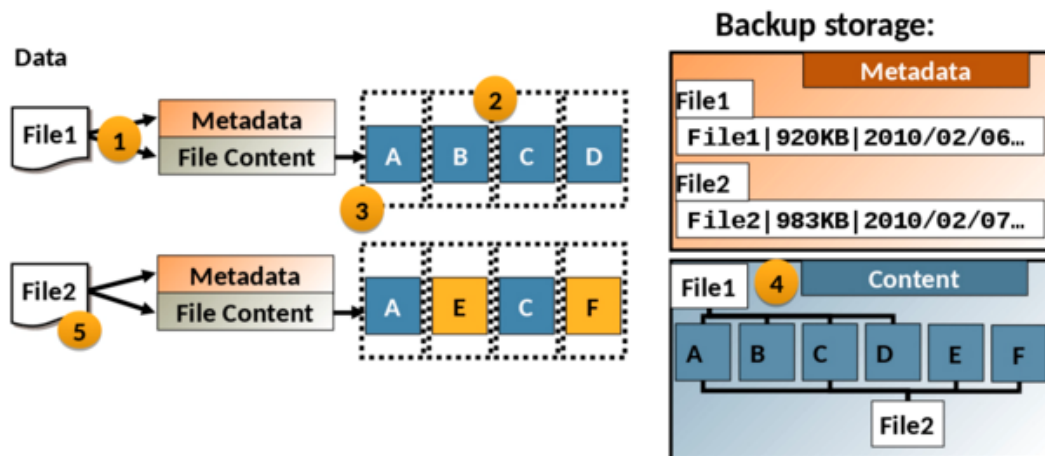
72. Upon information and belief, CenturyLink and Veritas’s affirmative acts of making, using, and selling the Accused Instrumentalities, and providing implementation services and technical support to users of the Accused Instrumentalities, have induced and continue to induce users of the Accused Instrumentalities to use them in their normal and customary way to infringe Claim 1 of the ‘908 patent by making or using a system comprising: a memory device; and a data accelerator configured to compress: (i) a first data block with a first compression technique to provide a first compressed data block; and (ii) a second data block with a second compression technique, different from the first compression technique, to provide a second compressed data block; wherein the compressed first and second data blocks are stored on the memory device, and the compression and storage occurs faster than the first and second data blocks are able to be stored on the memory device in uncompressed form. For example, CenturyLink instructs users of Secure Online Backup about the advantages of its deduplication and compression features. *See, e.g.,* <http://www.centurylink.com/business/asset/product-info/cloud-backup-faq-sf140477.pdf> (“After selecting files, your cloud backup software platform de-duplicates and compresses data in order to reduce transfer time.”);

https://apps.centurylink.com/sites/default/files/SecureOnlineBackup_savvisdirect_ProductOverview_Dec13.pdf (“Secure Online Backup also includes other key advantages that provide you with additional business benefits such as — incremental only data backups, data compression techniques such as common file elimination and data deduplication”); <https://apps.centurylink.com/support/knowledgebase/top-reasons-deploy-file-backup-and-recovery-strategy> (“Data reduction through deduplication and compression”). Veritas also instructs users of NetBackup about the advantages of its deduplication and compression features. *See, e.g.,* <http://www.settlersoman.com/netbackup-media-server-deduplication-pool-msdp-overview/>:

With NetBackup MSDP client deduplication, clients deduplicate their backup data and then send it directly to the storage server, which writes it to the storage. The network traffic is reduced.

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https://www.symantec.com/content/en/us/enterprise/fact_sheets/b-netbackup_appliance_5230_DS_21273484-1.en-us.pdf (“The intelligent deduplication engine sees into the data stream and accurately identifies files and object boundaries for efficient deduplication delivering up to 50x storage reduction and up to 99 percent

bandwidth reduction for backups”); https://www.veritas.com/support/en_US/article.000061574 (“NetBackup provides compression for the deduplicated data. It is separate from and different than NetBackup policy-based compression. By default, deduplication compression is enabled. Symantec recommends that you use the deduplication compression.”). For similar reasons, CenturyLink and Veritas also induce their customers to use the Accused Instrumentalities to infringe other claims of the ‘908 patent. CenturyLink and Veritas specifically intended and were aware that these normal and customary activities would infringe the ‘908 patent. CenturyLink and Veritas performed the acts that constitute induced infringement, and would induce actual infringement, with the knowledge of the ‘908 patent and with the knowledge, or willful blindness to the probability, that the induced acts would constitute infringement. On information and belief, CenturyLink and Veritas engaged in such inducement to promote the sales of the Accused Instrumentalities. Accordingly, CenturyLink and Veritas have induced and continue to induce users of the accused products to use the accused products in their ordinary and customary way to infringe the ‘908 patent, knowing that such use constitutes infringement of the ‘908 patent.

73. By making, using, offering for sale, selling and/or importing into the United States the Accused Instrumentalities, and touting the benefits of using the Accused Instrumentalities’ compression features, CenturyLink and Veritas have injured Realtime and are liable to Realtime for infringement of the ‘908 patent pursuant to 35 U.S.C. § 271.

74. As a result of CenturyLink and Veritas’s infringement of the ‘908 patent, Plaintiff Realtime is entitled to monetary damages in an amount adequate to compensate for CenturyLink and Veritas’s infringement, but in no event less than a reasonable royalty for the use made of the invention by CenturyLink and Veritas, together with interest and costs as fixed by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Realtime respectfully requests that this Court enter:

- a. A judgment in favor of Plaintiff that CenturyLink and Veritas have infringed, either literally and/or under the doctrine of equivalents, the '506 patent, the '728 patent, the '513 patent, and the '908 patent;
- b. A judgment and order requiring CenturyLink and Veritas to pay Plaintiff its damages, costs, expenses, and prejudgment and post-judgment interest for their infringement of the '506 patent, the '728 patent, the '513 patent, and the '908 patent as provided under 35 U.S.C. § 284;
- c. A judgment and order requiring CenturyLink and Veritas to provide an accounting and to pay supplemental damages to Realtime, including without limitation, prejudgment and post-judgment interest;
- d. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiff its reasonable attorneys' fees against CenturyLink and Veritas; and
- e. Any and all other relief as the Court may deem appropriate and just under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: February 26, 2016

Respectfully submitted,

/s/ Marc A. Fenster by permission Claire
Abernathy Henry

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